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**From:** Minoli, Kevin [Minoli.Kevin@epa.gov]  
**Sent:** 7/5/2017 1:14:54 PM  
**To:** Schwab, Justin [schwab.justin@epa.gov]  
**CC:** Fotouhi, David [fotouhi.david@epa.gov]; Baptist, Erik [baptist.erik@epa.gov]  
**Subject:** FW: NEW DECISION: First Circuit Ct of Appeals: State Indian Settlement Acts in ME: Penobscot Indian Nation's Reservation includes the islands but not the river waters or river bed  
**Attachments:** Penobscot.FirstCircuit.pdf

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**From:** Koslow, Karin  
**Sent:** Wednesday, July 05, 2017 8:58 AM  
**To:** OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; OGC Immediate Office MGMT <OGC\_Immediate\_Office\_MGMT@epa.gov>  
**Cc:** Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>  
**Subject:** NEW DECISION: First Circuit Ct of Appeals: State Indian Settlement Acts in ME: Penobscot Indian Nation's Reservation includes the islands but not the river waters or river bed

On June 30, 2017, a split panel of the First Circuit Court of Appeals issued a decision affirming in part and vacating in part a district court ruling addressing the boundary of the Penobscot Indian Nation's Reservation as well as the scope of the Tribe's sustenance fishing right. *Penobscot Nation v. Mills*, Nos. 16-1424, 16-1435, 16-1474, 16-1482 (1<sup>st</sup> Cir. June 30, 2017).

The Tribe had sued in federal district court seeking to resolve ongoing disputes with the State of Maine over the Main Stem of the Penobscot River. Specifically, the Tribe sought a declaration that in addition to certain islands located in the Main Stem, its Reservation also included the River itself, bank-to-bank. The United States intervened in the case in support of the Tribe.

The district court found that under the definition of the Reservation contained in State law and ratified by Congress, the Reservation consisted only of the islands, and not the waters or bed, of the Main Stem. The court also found, however, that the same statutory scheme preserved the Tribe's right to sustenance fish in the entire Main Stem.

A majority panel of the First Circuit affirmed the lower court's ruling that the relevant statutory definition of the Tribe's Reservation unambiguously included only the specified islands, and not the waters or riverbed of the Main Stem. With regard to the scope of the Tribe's sustenance fishing right, the majority found that the issue was not yet ripe for review and that the Tribe could not at this time demonstrate sufficient injury, or therefore standing, to advance a claim. The majority thus vacated that aspect of the lower court's ruling with instructions for dismissal – while expressly stating that it was not reaching the merits of the sustenance fishing issue. The dissent argued that the Reservation (and by extension the sustenance fishing right) includes the Main Stem, bank-to-bank.

**IMPACT:**

Ex. 5 ACP / DPP / AWP

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